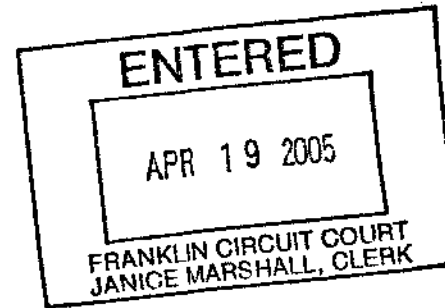


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 05-CI-00459



COMMONWEALTH OF KENTUCKY,  
OFFICE OF THE ATTORNEY  
GENERAL *Ex rel.* Gregory D. Stumbo in  
his official Capacity as Attorney General  
of the Commonwealth of Kentucky

PETITIONER

v.

**TEMPORARY INJUNCTION**

BOARD OF DIRECTORS FOR THE  
COMMONWEALTH  
POSTSECONDARY EDUCATION  
PREPAID TUITION TRUST FUND, et  
al.

RESPONDENTS

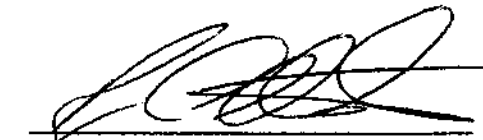
\* \* \* \* \*

The Petitioner, Commonwealth of Kentucky *ex rel.* Gregory D. Stumbo, Attorney General, applied for a temporary injunction against the Respondents, their officers, directors, agents, employees, members and anyone acting in concert with them, and filed a petition and affidavits. The Court held a hearing on April 7, 2005, and has made findings of fact and conclusions of law.

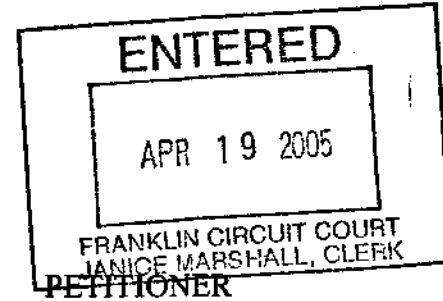
**IT IS ORDERED** that the Respondents, the Board of Directors for the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, in their official capacities, the Kentucky Higher Education Assistance Authority, and the Cabinet for Finance and Administration *ex. rel.* Robbie Rudolph in his official capacity as Secretary of Kentucky Finance and Administration Cabinet, their officers, directors, agents, employees, members and anyone acting in concert or participating with them, are enjoined and prohibited during the pendency of this action from implementing so much

of House Bill 267 signed into law on March 19, 2005, that compels the Respondents to take thirteen million seven hundred thousand one hundred dollars (\$13,700,100.00) from the Commonwealth Postsecondary Education Tuition Prepaid Trust Fund and place it in the General Fund.

**IT IS FURTHER ORDERED** that the Petitioner's motion to temporarily enjoin the implementation of portions of HB 267 which prohibit the future use of the Commonwealth's abandoned property fund by KAPT as a form of guarantee, is **DENIED.**

  
Roger L. Crittenden  
Judge, Franklin Circuit Court

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 05-CI-00459



COMMONWEALTH OF KENTUCKY,  
OFFICE OF THE ATTORNEY GENERAL  
*Ex rel.* Gregory D. Stumbo in his official  
capacity as Attorney General of the  
Commonwealth of Kentucky

v.

**FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**

BOARD OF DIRECTORS FOR THE  
COMMONWEALTH POSTSECONDARY  
EDUCATION PREPAID TUITION  
TRUST FUND, et al.

RESPONDENTS

\* \* \* \* \*

This matter was heard on April 7, 2005, on the motion of the Petitioner, Commonwealth of Kentucky, Office of the Attorney General *Ex rel.* Gregory D. Stumbo in his official capacity as Attorney General, for a temporary injunction. The Petitioner filed affidavits of the Respondent, Kentucky State Treasurer and Chairman of the KAPT Board, Jonathan Miller, Mr. Robert B. Crompton, FSA, MAAA, the actuary who performed the actuarial report attached to the Petition as Exhibit A, and Mr. Clinton B. Long, the Administrator of the KAPT Fund with Fifth Third Bank in Lexington. The Court heard the arguments of counsel on behalf of the Petitioner and on behalf of the Respondent, the Finance and Administration Cabinet. The remaining Respondents were not represented by counsel. The Court considered the Petition, the Motion for a Temporary Injunction and the Affidavits in support of the Motion, and after deciding that

no testimony or additional exhibits are necessary, the Court makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The KAPT Fund consists of funds paid under prepaid tuition contracts between private citizens and the Commonwealth, sums transferred from the reserve fund, and all earnings on those investments. In return for an agreed upon amount paid by private citizens, KAPT guarantees, among other things, that the children for whom the contracts are made will have their tuition paid to an eligible educational institution.

2. Prior to the 2005 session of the Kentucky General Assembly, under the terms of prepaid tuition contracts between KAPT and its "Purchasers," the KAPT's guarantee was backed up by 75% of the unclaimed property fund administered by the Treasury pursuant to KRS Chapter 393. The 2005 Budget Bill, HB 267, terminated this guarantee, effective March 22, 2005.

3. Money paid into the KAPT Fund is invested in securities through the Fifth Third Bank in Lexington, Kentucky.

4. In December of 2004, based upon an actuarial study, the KAPT Board determined that there was a funding deficit and ordered the transfer of thirteen million, seven hundred thousand and fifty-one dollars (\$13,700,051.00) from the unclaimed property fund, facilitated a wire transfer from the Respondent, Finance and Administration Cabinet, to the KAPT Fund held in Fifth Third Bank which, in turn, invested those monies in securities along with the investments in the KAPT contracts. See Exhibit A of Petition, verified by the Affidavit of Jonathan Miller.

5. Based on the actuarial study the KAPT Board at its December 1, 2004, meeting unanimously voted to transfer \$13.7 million dollars from the unclaimed property fund and place it with Fifth Third Bank, investment agent for the Fund. The transfer of the funds from the unclaimed property fund to the KAPT fund was carried out pursuant to a unanimous vote of the KAPT Board of Directors during a regularly scheduled Board meeting on December 1, 2004.

6. The actuarial study attached as Exhibit A to the Petition indicates that the KAPT Fund as of June 30, 2004, had an actuarial deficit of \$13.7 million dollars.

7. HB 267 requires that no later than June 30, 2005, \$13.7 million dollars be taken from the KAPT Fund and placed in the General Fund subject to appropriation in accordance with the budget enacted by the 2005 General Assembly.

8. If such a transfer of \$13.7 million dollars is effected pursuant to HB 276, the public will tend to lose confidence in the ability of the Fund to meet the obligations of prepaid tuition contracts entered into pursuant to KRS 164A.700 to KRS 164A.709.

9. The Master Agreement setting out the Commonwealth's liability on KAPT contracts is set forth at Sections 9.03 and 9.04 of Master Agreement attached to the Petition as Exhibit F.

10. The Affidavit of the Treasurer and Chairman of the KAPT Board, Jonathan Miller, incorporates the Petition and its Exhibits into the Treasurer's Affidavit as if fully set out therein. See Affidavit of Jonathan Miller at paragraph 7.

11. There is presently no mechanism in statute or in the budget to return the \$13.7 million dollars to the KAPT Fund in the event the money is taken from the KAPT fund in accordance with HB 267.

### CONCLUSIONS OF LAW

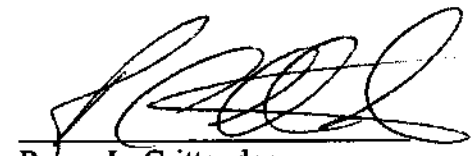
1. The KAPT Program will suffer immediate and irreparable harm if a temporary injunction is not granted during the pendency of this action because the public will lose confidence in the KAPT Fund.

2. The loss of confidence of the public in the KAPT Fund constitutes irreparable injury in that it is not subject to pecuniary measurement and its lasting effects cannot be measured.

3. The equities weigh in favor of the Petitioner because if HB 267 is not implemented before June 30, 2005, and the status quo is maintained by retaining the \$13.7 million in the KAPT Fund accounts, the Commonwealth will not be injured during the time required for the ultimate determination of the claims in this case. If the Commonwealth is ultimately successful, the recapture of the \$13.7 million from the KAPT Fund is likely to happen within the biennial budget cycle.

4. The Petitioner has demonstrated that substantial public rights are involved, which can best be protected by maintaining the status quo.

5. Implementation of the 2005 Budget Bill language prohibiting the future use of the Commonwealth's abandoned property fund to guarantee the KAPT Program will not cause immediate and irreparable injury to the Petitioner, the KAPT Program or the public.



Roger L. Crittenden  
Judge, Franklin Circuit Court